

REMARKS

Status of the Claims

Claims 1-38 are pending.

Claims 1-2, 4-7, 9-14, 15-20, 22, 24-27, 29-32, 34, and 36-38 were rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,832,449 to in view of US Patent Number 5,945,651 to Chorosinski.

Claims 3, 23, 28 and 35 were rejected under 35 USC 103(a) as being unpatentable over Cunningham in view of Chorosinski as applied to claims 2, 22, 27, 34 respectively, and further in view of US Patent Number 5,666,490 to Gillings.

Claims 8, 21 and 33 were rejected under 35 USC 103(a) as being unpatentable over Cunningham in view of Chorosinski, as applied to claims 1, 15, 27 respectively and further in view of US Patent Number 6,564,121 to Wallace.

Applicant traverses the rejections and respectfully requests reconsideration.

Claims 1 and 11 are amended.

Claim 1 is amended to delete reference to the token having been distributed to the prescriber by a drug dispenser, in response to the Claim Rejection of claims 1-14 under 35 USC 112, as asserted at page 2, Item 4. of the Final Office Action.

Claim 11 is amended to refer to "prescribers" in response to the Claim Objection at page 2, Item 2. of the Final Office Action.

No new matter has been added by way of these claim amendments.

Arguments

Applicant submits that this Reply and Amendment places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art of Cunningham, Chorosinski, Gillings and Wallace.

A. Cunningham Does not Disclose: " .. the token is provided by the prescriber to the pre-identified Patient for obtaining the pharmaceutical drug sample from a drug dispenser."

The Merriam-Webster dictionary defines a token as "something given or shown as a guarantee (as of authority, right, or identity)." (Applicant's emphasis via underline).

Importantly, the product trial media of Cunningham is not a token provided by the prescriber to a pre-identified patient for obtaining the pharmaceutical drug sample from the drug dispenser, since at least until this point in time, it not something given as a guarantee of a right to a drug sample.

In Cunningham, a prescriber provides a product trial media to a bearer. At this stage, the product trial media does not even identify a patient. The bearer of Cunningham next renders the product trial media to the pharmacy. Up to this point, and before the mandatory steps of authentication and determination of validity are performed by the pharmacy, the product trial media cannot be considered a token since the right to a drug sample still has not yet been created.

It is only after the step of authentication of the product trial media is successfully completed at the pharmacy is any right to a drug sample created, in Cunningham. The pharmacy must

successfully establish authenticity before a bearer is endowed with any right, or entitlement, to a drug sample in Cunningham.

In Applicant's instant case, the right to a drug sample, the "token" according to the strict meaning of the word, is created and exists upon the prescriber identifying the specific patient on the card, and signing the card. No further validation step is necessary, nor required, to perfect a right to a drug sample, unlike in Cunningham.

Cunningham therefore cannot be strictly interpreted to disclose a token provided by the prescriber to a pre-identified patient for obtaining the pharmaceutical drug sample from the drug dispenser, since at least until this point in time, a right to a drug sample does not exist.

Applicant respectfully requests the Examiner's full consideration on this point. Applicant is entitled to the benefit of his carefully chosen claim terms, in this case the term "token", being interpreted consistent with the actual meaning of that term.

B. With Regard to the term "Pre-Identified Patient", it would not have been Obvious for One Skilled in the Art to Combine Cunningham with Chorosinski.

The Office Action at page 4 asserts that:

In Cunningham, the patient is not pre-identified, however, the Office takes the position that this feature is well known in the health care and pharmaceutical dispensing industry (i.e. to identify a patient on a prescription or a token to redeem to pharmaceutical sample) as is illustrated by Chorosinski (Col. 7, Ln. 24-46). At the time of the invention, it would have been obvious for one of ordinary skill in the prescription dispensing industry to have modified the teachings of Cunningham with this aforementioned teachings from Chorosinski with the motivation of having a means of identifying a patient who redeems a pharmaceutical prescription or pharmaceutical sample, as recited in Chorosinski (Col. 5, Ln. 24-46). One of ordinary skill in the art in the pharmaceutical dispensing industry would make this modification to Cunningham to ensure that prescription fraud does not take place and also to ensure that the prescription sample or prescription is dispensed only to the correct, identified patient since prescriptions or prescription samples can be dangerous if taken without authorization or approval for an authorized prescriber.

Applicant respectfully disagrees both with the Examiner's rationale for the combination, and the Examiner's conclusion, that it would have been obvious to combine Chorosinski with Cunningham.

Cunningham already incorporates stringent safeguards to ensure correct dispensation of the drug sample to the correct person, as described at columns 10 and 11 respectively:

40 However, before the pharmacy can fill the prescriptive trial product of any presented product trial media **18**, the product trial media must be subjected to a "validation" procedure. The "validation" procedure is basically illustrated in FIGS. 7A-7B. Essentially, this validation procedure establishes that the presented product trial media **18** is authentic, still within an acceptable date range, has been activated by a prescriber, and has not previously been validated. Once validation is established for any presented product trial media, then the participating pharmacy can issue the prescriptive trial pharmaceutical product to the
45 patient.
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product trial media 18. In addition, both the pharmacy and the patient sign the now validated product trial media 18. Once validation is established the pharmacy then dispenses pharmaceutical trial product authorized by that valid product trial media and permanently stores the validated media. At the same time, the central computing station 12 records the full validation data within its database by showing that a particular product trial media 18 has been validated, the date of such validation, and the identity of the pharmacy validating the same.

Note that the patient signing the validated product trial media, after authentication by the pharmacy, is sufficient to prevent any prescription fraud taking place, and also to ensure dispensation to the correct patient.

So Cunningham already discloses stringent measures and safeguards in place to prevent prescription fraud and ensure correct dispensation of the drug sample, and there would be no advantage gained, and thus no reason or motivation for one skilled in the art to combine Cunningham with Chorosinski, with regard to a patient pre-identification feature.

Applicant respectfully submits that the Examiner's proposed combination of Cunningham with Chorosinski, therefore, is based on an inappropriate hindsight analysis.

For the above reasons, none of the cited references of Cunningham, Chorosinski, Gillings and Wallace, either alone, or in combination, discloses the Applicant's invention as presently claimed in claims 1-38, especially with regard to use of a token, representative of benefits such as drug samples, by a specific, pre-identified patient.

Conclusion

Applicant respectfully submits that since the Examiner's cited references neither alone, nor in combination, disclose the Applicant's invention as presently claimed, for at least the reasons set out above, the application in its present form is in condition for allowance. Action toward that goal is respectfully requested.

The Examiner is kindly invited to contact applicant's agent Henry Ohab at 416.862.3593 if it would be of assistance in resolving any issues in this application.

Respectfully submitted,

/Henry Ohab/

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